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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 000213

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [TU](#)
SUBJECT: TURKEY: TOP COURTS DEFEND POLITICAL ROLE

REF: A. ANKARA 0171
[1](#)B. ANKARA 0165
[1](#)C. 07ANKARA 01112

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Classified By: Political Counselor Janice G. Weiner, for Reasons 1.4 (b ,d)

[1](#)1. (C) SUMMARY. Two of Turkey's highest courts are publicly and privately signaling an intention to play an interventionist role in constraining government efforts to lift the headscarf ban at universities -- a proxy for what they view as the larger struggle for the Republic's soul. Court of Appeals (Yargitay) Acting President Osman Sirin sent a powerful public warning to the government February 4, while a judge in Turkey's highest administrative court (Danistay), with jurisdiction over headscarf cases under administrative law, privately indicated to us some in the judiciary have already made up their minds how they will rule when such cases arise. END SUMMARY.

Courts Fire a Warning Shot

[1](#)2. (SBU) Court of Appeals Acting President Osman Sirin, referring to the headscarf controversy, stated February 4 that legislative authority does not allow one to touch the principle of secularism. Speaking at a retirement ceremony, Sirin noted the words of the judiciary, too, should be heeded. Sirin reportedly decided to "share his views" and invited the media to the retirement ceremony after the female Yargitay judges called on him to join them in donning their robes and demonstrating at Ataturk's mausoleum -- a site symbolic for the Republic and a popular location for protests against the ruling Justice and Development Party (AKP) government.

[1](#)3. (SBU) Sirin recalled that when he went to university in the 1960's, "There were neither students who felt the need to cover themselves, nor demonstrators at the gate for students not to cover." There were three universities in Turkey, which had a contemporary image and focused on education. He defended a role for elites like himself, saying, "We have to influence and listen to each other." Remarking on the government's proposed lifting of the headscarf ban, he said, "This behavior, which... will continue with an uncontrollable speed... must be questioned by the judiciary." Sirin

referred to the 1982 Constitution, which AKP and MHP have proposed amending, as indispensable.

¶4. (SBU) Reading from a September 28, 2007 Court of Appeals declaration, Sirin noted heads of the court chambers had stressed it was unacceptable to hurt the Republic's principal benefits by amending the constitution's immutable articles or provisions that might seem subject to amendment. Sirin warned, "Today the Court of Appeals stood behind those words. It is legally behind them and it will be behind them through legal actions."

A Window into Judicial Thinking

¶5. (C) Council of State (Danistay) 11th court judge and former Corum and Amasya governor Huseyin Poroy (strictly protect) provided a more private window into state establishment thinking on the headscarf debate. A direct appointee of former President Sezer, Poroy indicated he is relieved to be freed of the muzzle of the governorship, and does not mince words: AKP and the opposition Nationalist Action Party (MHP) are using their respective Islamic and Islamic-Turkish synthesis agendas to "pull down" the Republic. They are using democratic tools to end democracy. The Iranian revolution, he said, is an important reminder of what can happen. The headscarf is in no way about rights; it is about the Republic. Of course, Turks aren't backward like Afghans or Iranians, he added, but without Ataturk's principles, they would be. Not one of Ataturk's principles can be changed, he stated, or the regime will collapse. "These guys" should be careful, because if the regime collapses, it will collapse on their heads.

¶6. (C) Implying AKP enjoys full support from the United States, Poroy reminded us of the boomerang effect of US support for Afghan mujaheddin that later led to the Taliban.

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America should be very careful about signaling support for a closed-minded, internally focused group (AKP); when the US reaches out to its friend Turkey, it may find not even the "T" of Turkey remains -- the country will have completely transformed. Poroy's conclusion from the January al-Qaeda roundup in Gaziantep is not that an AKP-run administration can fight terrorists, but that Islamic extremists found a home here in the first place.

¶7. (C) Poroy highlighted the extent of the legitimacy gap felt by people who share his views, stating it is very difficult "for me and people who think like me to accept these guys or to call (Abdullah) Gul 'my president.'"

¶8. (C) COMMENT. For many Turks, AKP's July 2007 sweeping electoral win put the military and die-hard secularists back into a box. But the headscarf ban controversy parliament is confronting this week (reftels A and B) reveals those who fear an encroaching Islamic agenda under AKP still hold fast to their suspicions, priorities, and tools. Some elements of this fight, like the large public rallies Turkey witnessed February 2, affirm vibrant participatory democracy. Others are more retrograde. As with the dubious May 2007 Constitutional Court ruling that temporarily prevented Gul from becoming president and other judicial press conferences (reftel C), these outspoken judges show that the judiciary, far from an impartial executor of justice, sees itself as one of the most potent remaining tools in the Kemalist arsenal.

END COMMENT.

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